

DATE: April 13, 2004

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 02-14310

**DECISION OF ADMINISTRATIVE JUDGE**

**JOHN G. METZ, JR.**

**APPEARANCES**

**FOR GOVERNMENT**

Nygina T. Mills, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant's 20+ year history of alcohol abuse and dependence was not mitigated where it was punctuated by six alcohol-related arrests and seven alcohol-related treatments, several of which resulted in a diagnosis of alcohol dependence by a credentialed medical professional. Applicant's evidence fails to establish that she has either stopped consuming or stopped abusing alcohol, or otherwise has a recovery system in place to prevent recurrence of her alcohol abuse. Clearance denied.

**STATEMENT OF THE CASE**

On 29 September 2003, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) (Item 1) to Applicant, stating that DOHA could not make the preliminary affirmative finding<sup>(1)</sup> that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On 29 October 2003, Applicant answered the SOR (Item 2) and requested an administrative decision on the record. Applicant did not respond to the Government's File of Relevant Material (FORM)--issued 10 November 2003; the record in this case closed 26 December 2003, the day the response was due at DOHA. The case was assigned to me on 15 January 2004 to determine whether clearance should be granted, continued, denied or revoked.

**FINDINGS OF FACT**

Applicant admitted the alcohol allegations of paragraph 1 of the SOR, but denied the allegations of paragraphs 2 (Personal Conduct) and 3 (Financial Considerations). Accordingly, I incorporate Applicant's admissions as findings of fact.

Applicant--a 51-year-old employee of a defense contractor--seeks to retain her access to classified information.

Applicant has an extensive history of alcohol abuse punctuated by six alcohol-related arrests and seven periods of

alcohol counseling and/or treatment. She is an alcohol dependent who apparently continues to drink--contrary to medical advice--and is in denial of her alcohol problem.

Applicant has six arrests for operating her vehicle while intoxicated or under the influence of alcohol: August 1979 (reduced to reckless driving), June 1981 (DUI), February 1985 (DUI), November 1987 (DUI, failed blood alcohol test after being in an accident, while five months pregnant), April 1999 (DUI), and June 2000 (DUI, .22 BAC, nearly three times the state's legal limit of .08).<sup>(2)</sup> She also has seven alcohol-related contacts with medical professionals: June 1975 (hospital consult to discuss her use of alcohol), December 1987 (attended one session, diagnosed as alcohol dependent by a credentialed medical professional, refused to participate further), February 1995 (2-day hospital admission for alcohol detoxification, diagnosed as alcohol-dependent by a credentialed medical professional), May-October 1998 (treatment for alcohol dependence and depression; advised to abstain from alcohol), August-October 2000 (counseling for alcohol dependence), December 2000-January 2001 (3-day hospital admission for alcohol detoxification, diagnosed as alcohol dependent by credentialed medical professional), which also revealed a February 1999 hospital detoxification.<sup>(3)</sup> After her last hospital admission, she was recommended for an extensive outpatient program, but did not participate because her husband does not think she has an alcohol problem and much of their relationship involves alcohol; drinking is also a major focus of their leisure activities with friends. She was not willing to admit she was an alcoholic, and admitted being afraid that her relationship with her husband would change drastically if she stopped drinking altogether.

Applicant's answer acknowledges that she has a tendency to self-medicate with alcohol during times of stress and makes uncorroborated claims that she weathered 9/11 and her mother's death in September 2002 without becoming stressed. Her answer contains no indication whether she is still drinking and if so, how much. Nor does it contain any information on what support system she has in place to avoid falling back into alcohol abuse. She had previously expressed an unwillingness to participate in AA because she objected to its religious focus, but she does not appear to have followed up on her stated intent to pursue rational recovery programs.

On 20 December 2000, Applicant falsified her clearance application when she disclosed her April 1999 and June 2000 alcohol arrests (and her August-October 2000 alcohol counseling) but did not disclose her other four alcohol-related arrests or the other three (February 1995, May-October 1998, and February 1999) alcohol-related treatments within the last seven years. Her explanation--that she did not think she had to report offenses that had previously been reported--would be more believable if she had not used that explanation in April 1990 when she was confronted about potential falsifications during that subject interview for disclosing only her November 1987 alcohol arrest on her clearance application. Her explanation also does not explain why she omitted her other alcohol-related treatments during the past seven years.

A May 2003 Credit Bureau Report (CBR)(Item 15) reflects a public record lien for approximately \$7,600.00 filed in March 1993. Applicant denies having any liens, and the CBR contains no indication of who filed the lien or why.

The record contains no evidence of Applicant's work performance or reputation.

### **POLICIES**

Enclosure 2 of the Directive sets forth adjudicative guidelines to be considered in evaluating an individual's security eligibility. The Administrative Judge must take into account the conditions raising or mitigating security concerns in each area applicable to the facts and circumstances presented. Each adjudicative decision must also assess the factors listed in Section F.3. and in Enclosure (2) of the Directive. Although the presence or absence of a particular condition for or against clearance is not determinative, the specific adjudicative guidelines should be followed whenever a case can be measured against this policy guidance, as the guidelines reflect consideration of those factors of seriousness, recency, motivation, *etc.*

Considering the evidence as a whole, the following adjudication policy factors are most pertinent to this case:

### **ALCOHOL CONSUMPTION (GUIDELINE G)**

E2.A7.1.1. **The Concern:** Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness.

E2.A7.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A7.1.2.1. Alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, or other criminal incidents related to alcohol use.

E2.A7.1.2.2. Alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, or drinking on the job;

E2.A7.1.2.3. Diagnosis by a credentialed medical professional (e.g., physician, clinical psychiatrist, or psychiatrist) of alcohol abuse or alcohol dependence;

E2.A7.1.2.5. Habitual or binge consumption of alcohol to the point of impaired judgment;

E2.A7.1.2.6. Consumption of alcohol, subsequent to a diagnosis of alcoholism by a credentialed medical professional and following completion of an alcohol rehabilitation program.

E2.A6.1.3. Conditions that could mitigate security concerns include:

None.

### **PERSONAL CONDUCT (GUIDELINE E)**

E2A5.1.1. **The Concern:** Conduct involving questionable judgment, untrustworthiness, unreliability, lack of candor, dishonesty, or unwillingness to comply with rules and regulations could indicate that the person may not properly safeguard classified information. . .

E2. A5.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A5.1.2.2. The deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

E2.A5.1.2.3. Deliberately providing false or misleading information concerning relevant and material matters to an investigator, . . . in connection with a personnel security or trustworthiness determination;

E2.A5.1.3. Conditions that could mitigate security concerns include:

None.

### **FINANCIAL CONSIDERATIONS (GUIDELINE F)**

E2.A6.1.1. **The Concern:** An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. Unexplained affluence is often linked to proceeds from financially profitable criminal acts.

E2.A6.1.2. Conditions that could raise a security concern and may be disqualifying include:

E2.A6.1.2.3. Inability or unwillingness to satisfy debts;

E2.A6.1.3. Conditions that could mitigate security concerns include:

None.

## **Burden of Proof**

Initially, the Government must prove controverted facts alleged in the Statement of Reasons. If the Government meets that burden, the burden of persuasion then shifts to the applicant to establish security suitability through evidence of refutation, extenuation or mitigation sufficient to demonstrate that, despite the existence of disqualifying conduct, it is nevertheless clearly consistent with the national interest to grant or continue the security clearance.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. Where facts proven by the Government raise doubts about an applicant's judgment, reliability or trustworthiness, the applicant has a heavy burden of persuasion to demonstrate that he or she is nonetheless security worthy. As noted by the United States Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988), "the clearly consistent standard indicates that security-clearance determinations should err, if they must, on the side of denials."

## **CONCLUSIONS**

The Government has established its case under Guideline G. Applicant's history of alcohol abuse is well established by her multiple alcohol-related arrests and multiple treatments for alcohol dependence. Applicant neither claims nor demonstrates any abstinence from alcohol consumption, much less abuse, nor does she proffer any explanation upon which I might reasonably conclude that she no longer abuses alcohol or is at risk to abuse alcohol. Instead, everything about this record corroborates my impression that she remains in denial of her alcohol dependence and remains at substantial risk to abuse alcohol again. Essentially, she meets all of the disqualifying factors under the guideline, while satisfying none of the mitigating factors. I find Guideline G. against Applicant.

The Government has established its case under Guideline E. Applicant clearly understated her adverse alcohol history, both regarding her arrests and her treatment within the last seven years. I found her explanation for the omission unconvincing, particularly where she had reason to know from prior experience that she was required to disclose all alcohol-related arrests and all alcohol treatment and counseling within the last seven years. I resolve Guideline E against the Applicant. <sup>(4)</sup>

The Government has not established its case under Guideline F. The Government's only evidence of this debt is an otherwise clean, 5-page credit bureau report (CBR) that contains an otherwise unidentifiable publicly-filed lien for approximately \$7600.00 filed in March 1993. The SOR allegation alleges as much as the Government knows about this alleged debt, which Applicant denies. While a CBR may be some evidence of debt, where--as here--Applicant denies the debt, the CBR does not identify any information that could clue the Government, the Applicant, or me who or why the lien was filed, there is no indication on the CBR of any other debt that might have ripened into this lien, Applicant was never confronted with this alleged debt, nor did the Government otherwise investigate, I cannot conclude that the Government has made its case under Guideline F. Further, even if I concluded that the Government had established its case, I would not conclude that this one debt was sizeable enough, considered against Applicant's otherwise clean CBR, to present any pressure point to Applicant, particularly where there is no evidence of any effort by the creditor to pursue the lien. I resolve Guideline F for Applicant.

## **FORMAL FINDINGS**

Paragraph 1. Guideline G: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: Against the Applicant

Subparagraph c: Against the Applicant

Subparagraph d: Against the Applicant

Subparagraph e: Against the Applicant

Subparagraph f: Against the Applicant

Subparagraph g: Against the Applicant

Subparagraph h: Against the Applicant

Subparagraph i: Against the Applicant

Subparagraph j: Against the Applicant

Paragraph 2. Guideline E: AGAINST THE APPLICANT

Subparagraph a: Against the Applicant

Subparagraph b: For the Applicant

Paragraph 3. Guideline F: FOR THE APPLICANT

Subparagraph a: For the Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant.

**John G. Metz, Jr.**

**Administrative Judge**

1. Required by Executive Order 10865, as amended and Department of Defense Directive 5220.6, dated January 2, 1992--and amended by Change 3 dated 16 February 1996 and Change 4 dated 20 April 1999 (Directive).
2. Her June 2001 sworn statement demonstrates the high level of her alcoholic denial. She states her June 2000 DUI arrest was because she had "three drinks" at dinner, knew she should not be driving back to the hotel, and was sitting in her car in the parking lot with the radio on trying to decide what to do when the police found her and charged her with DUI. The contemporaneous police record reflects Applicant was found blacked out in her car (which was running) and blew a .22 BAC. According to research used by MADD and other anti-drunk driving organizations, a 137-pound woman who had three drinks in two hours would test at approximately .07 BAC. *See*, [www.madd.org/stats/0,1056,1183,00.html](http://www.madd.org/stats/0,1056,1183,00.html). Applicant, at 110 pounds, blew a .22. It is simply not credible for her to maintain she only had three drinks. In a similar fashion, she describes her New Year's 2000 hospital admission as something that helped her "get through a stressful situation," completely ignoring the fact that she was there for detoxification from a two-week binge of alcohol.
3. During her intake interview, Applicant described her alcohol consumption: "'I'm a binge drinker' 3 or 4 times a year. 'Went on a cruise and drank every day from December 16<sup>th</sup> -23rd.' Came home and was sober on 24<sup>th</sup> . Started drinking on Christmas and has been drinking every day since.'" Elsewhere in the medical records she reported drinking eight to ten drinks per day while on the cruise, a liter of alcohol per day since Christmas, and a 6-pack of beer the morning of her admission. She had consumed a fifth of benedictine and brandy, a fifth-and-a-half of vodka and 24 beers in the last five days. She acknowledged trying to stop alcohol on her own in 1995, with her longest period of abstinence being six months. She also disclosed an additional hospital detoxification in February 1999.
4. I resolve the allegation in subparagraph 2.b. for Applicant because the security significance of a former employer who would not hire Applicant because of her alcohol problem not really an issue of personal conduct but an issue of the adverse consequences of alcohol abuse in the workplace more properly considered as part of the evaluation of the Alcohol Consumption guidelines.

